

1 ROBERT DAVID BAKER, INC.
2 Robert David Baker (Bar No. 87314)
3 1611 The Alameda
4 San Jose, California 95126
5 Telephone: (408) 292-8555
6 Facsimile: (408) 292-0703

7 Attorney for Plaintiff Sam Abboud

8 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
9 Scott G. Lawson (Bar No. 174671)
10 50 California Street, 22nd Floor
11 San Francisco, CA 94111
12 Telephone: (415) 875-6600
13 Facsimile: (415) 875-6700

14 Attorneys for International Business Machines Corporation



15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 SAM ABOUD,

19 Plaintiff,

20 v.

21 INTERNATIONAL BUSINESS MACHINES
22 CORPORATION, JOE SMYTH; JOHN DOE
23 #1; JOHN DOE #2; DOES 1-48,

24 Defendants.

Case No. C04-00017 JW

STIPULATION AND ~~PROPOSED~~
ORDER MODIFYING SCHEDULING
ORDER

25 The parties hereby stipulate to modify the scheduling order in this case as follows:

26 WHEREAS, a substantive discovery dispute has arisen between Plaintiff and a non-party;

27 WHEREAS, a hearing to resolve the discovery dispute has been scheduled on an
28 expedited basis;

WHEREAS, to accommodate the resolution of the discovery dispute, Plaintiff requested
that certain noticed depositions be scheduled following the close of fact discovery on September
14, 2005;

1 WHEREAS, the parties believe that litigation efficiency will be increased by permitting
2 the parties to complete fact discovery prior to exchanging expert-witness information and filing
3 dispositive motions; and

4 WHEREAS, the parties also intend to mediate the matter in October 2005,

5 IT IS HEREBY STIPULATED AS FOLLOWS:

6 1. Depositions of IBM witnesses The Person Most Knowledgeable Concerning the
7 Acquisition of the Storage Technology Division by Hitachi, Dilip Kandlur, Dennis Renaud,
8 Wayne Imiano, Stuart Parkin, previously noticed will take place on or before November 4, 2005.
9 The depositions of non-party witnesses Ciarn Fox, Anthony Seales, and Kim Karcher, previously
10 noticed will take place on September 26, 2005.

11 2. With the exception of the depositions referenced in paragraph 1, no additional
12 discovery will take place following September 14, 2005.

13 3. The deadlines for exchanging expert-witness information and filing dispositive
14 motions will be modified as follows to take into account the schedule set forth above:

15 a. The last day for hearing dispositive motions is December 19, 2005.

16 b. Any party wishing to present expert witness testimony with respect to a
17 claim or a defense shall lodge with the Court and serve on all other parties the name, address,
18 qualifications, resume and a written report that complies with Fed. R. Civ. P. 26(a)(2)(B) on or
19 before November 1, 2005.

20 c. Any party objecting to the qualifications or proposed testimony of an
21 expert must file, serve and notice a motion to exclude the expert or any portion of the expert's
22 testimony in writing in accordance with Civil Local Rule 7-2, for hearing no later than November
23 29, 2005.

24 d. If the testimony of the expert is intended solely to contradict or rebut
25 opinion testimony on the same subject matter identified by another party, the party proffering a
26 rebuttal expert shall make the disclosures required by Federal Rule of Civil Procedure
27 26(a)(2)(B) no later than December 16, 2005.

28 e. Expert discovery must be completed no later than January 9, 2006.

1 f. The attorneys who will try the case will confer with one another and file
2 and lodge with Chambers on January 16, 2006 a Preliminary Pretrial and Trial Setting
3 Conference Statement and Proposed Order.

4 g. The attorneys who will try the case will appear on January 30, 2006 at
5 11:00 a.m. for a Preliminary Pretrial and Trial Setting Conference.

6 The parties respectfully request that the Court adopt the above-referenced schedule, and
7 modify the Court's Scheduling Orders accordingly.

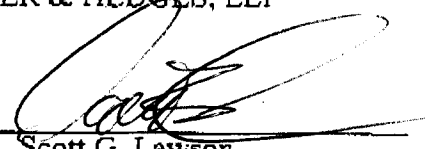
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9 Dated: September 8, 2005

ROBERT DAVID BAKER, INC.

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11 By: 
Robert David Baker
12 Attorneys for Plaintiff Sam Abboud

13 Dated: September 8, 2005

QUINN EMANUEL URQUHART
OLIVER & HEDGES, LLP

14
15
16 By: 
17 Scott G. Lawson
Attorneys for Defendant
18 International Business Machines Corporation

19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

20 Dated: 9/12/05

21 /s/ James Ware
JAMES WARE
22 United States District Judge
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